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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOHN MERRELL,

11 Plaintiff,

12 v.

13 NOREEN RENIER,

14 Defendant.
15

CASE NO. C06-404JLR

ORDER

16
17 **I. INTRODUCTION**

18 This matter comes before the court on Plaintiff John Merrell's motion to remand
19 (Dkt. # 42). Having considered the motion, the parties' briefing, and their supporting
20 documentation, the court DENIES the motion.

21 **II. BACKGROUND**

22 Plaintiff originally filed this matter in Snohomish County Superior Court.
23 Defendant removed the case to this court based on a valid forum selection clause in the
24 parties' previous settlement agreement. Plaintiff timely moved to remand the action,
25 contending that Defendant failed to meet the amount in controversy requirement for this
26 court's diversity jurisdiction. On June 6, 2006, the court denied Plaintiff's motion to
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1 remand (Dkt. # 12). The court held that it had diversity jurisdiction over the action
2 because Defendant had established a colorable argument that, if Plaintiff succeeded on all
3 of his claims, damages could exceed \$75,000. Id.

4 Plaintiff subsequently moved for summary judgment on his breach of contract
5 claim and requested that the court award disgorgement of the Defendant's profits to him.
6 Pl.'s Supp. at 2. The court granted Plaintiff's motion for summary judgment but declined
7 to exercise its equitable power to award Plaintiff disgorgement of profits (Dkt. # 39).
8 Plaintiff now claims that because the court ruled that it would not award disgorgement of
9 profits, under no set of facts can his damage claim be greater than \$75,000. Plaintiff
10 therefore again moves for a remand order based on the failure to meet the monetary
11 threshold for diversity jurisdiction. See 28 U.S.C. § 1332(a).
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13 **III. ANALYSIS**

14 Plaintiff bases his request solely on the fact that, over six months after this case
15 was filed, this court significantly reduced his damages by denying disgorgement of
16 profits. The law on this issue is clear: the rule in diversity cases is that if the
17 jurisdictional requisites are present when the action begins, subsequent events will not
18 ordinarily defeat the district court's jurisdiction. St. Paul Mercury Indemnity Co. v. Red
19 Cab Co., 303 U.S. 283, 295 (1938); see also Hill v. Blind Indus. & Serv. of Md., 179
20 F.3d 754, 757 (9th Cir. 1999) (holding that "diversity jurisdiction is determined at the
21 time the action commences, and a federal court is not divested of jurisdiction . . . if the
22 amount in controversy subsequently drops below the minimum jurisdictional level").

23 Ignoring the well-settled law on this issue, Plaintiff cites an unpublished district
24 court opinion, Edison v. USAA Casualty Ins. Co., No. C06-5259, 2006 WL 1806188
25 (W.D. Wash. June 28, 2006), for the proposition that a court may consider post-removal
26 evidence to clarify the amount in controversy. Pl.'s Supp. at 3. Edison is inapposite to
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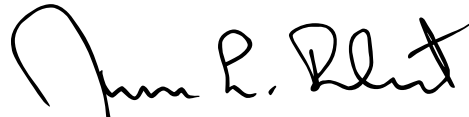
1 the instant case. In Edison, the defendant removed the matter to federal court and
2 plaintiff immediately moved to remand based on defendant's failure to establish the
3 jurisdictional requirement for the amount in controversy. 2006 WL 1806188 at *3. The
4 court held that defendant's failure to meet its burden in establishing the amount in
5 controversy required that the case be remanded to state court. Id. Unlike the instant
6 motion, the plaintiff in Edison moved to remand the matter within one-month of the
7 removal. Id. Here, Plaintiff seeks remand after a prior unsuccessful motion for remand, a
8 motion for summary judgment, and nearly nine months of litigating this matter before this
9 court. The court held in ruling on Plaintiff's first motion to remand that the Defendant
10 had come forth with sufficient evidence to show that the amount in controversy could
11 exceed \$75,000. Once the court found that it had jurisdiction over this matter, later
12 events, such as a ruling on summary judgment, will not divest the court of jurisdiction.
13 The court therefore does not find Plaintiff's argument persuasive and will not remand
14 Plaintiff's remaining claim to state court.
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16 IV. CONCLUSION

17 For the reasons stated above, the court DENIES Plaintiff's second motion to
18 remand (Dkt. # 42).

19 Dated this 18th day of January, 2007.

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JAMES L. ROBART
United States District Judge